

16-341 TC HEARTLAND LLC V. KRAFT FOODS BRANDS GROUP LLC

DECISION BELOW: 821 F3d 1338

LOWER COURT CASE NUMBER: 2016-105

QUESTION PRESENTED:

The patent venue statute, 28 U.S.C. § 1400(b), provides that patent infringement actions "may be brought in the judicial district where the defendant resides " The statute governing "[v]enue generally," 28 U.S.C. § 1391, has long contained a subsection (c) that, where applicable, deems a corporate entity to reside in multiple judicial districts.

In *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222 (1957), this Court held that § 1400(b) is not to be supplemented by § 1391(c), and that as applied to corporate entities, the phrase "where the defendant resides" in § 1400(b) "mean[s] the state of incorporation only." *Id.* at 226. The Court's opinion concluded: "We hold that 28 U.S.C. § 1400(b) is the sole and exclusive provision controlling venue in patent infringement actions, and that it is not to be supplemented by the provisions of 28 U.S.C. § 1391 (c)." *Id.* at 229 .

Federal Circuit precedent holds to the contrary. Although Congress has not amended § 1400(b) since *Fourco*, the Federal Circuit has justified its departure from *Fourco*'s interpretation of § 1400(b) based on amendments to § 1391(c). As stated in the decision below, Federal Circuit precedent holds that "the definition of corporate residence in the general venue statute, § 1391(c), applie[s] to the patent venue statute, 28 U.S.C. § 1400" (App. 4a) and that "*Fourco* was not and is not the prevailing law" (App. 5a) on where venue is proper in patent infringement actions under § 1400(b).

The question in this case is thus precisely the same as the issue decided in *Fourco*:

Whether 28 U.S.C. § 1400(b) is the sole and exclusive provision governing venue in patent infringement actions and is not to be supplemented by 28 U.S.C. § 1391(c).

CERT. GRANTED 12/14/2016